

Search & Seizure

Stabilization

Communication

Investigation

Disposition

Adjudication

Resolution

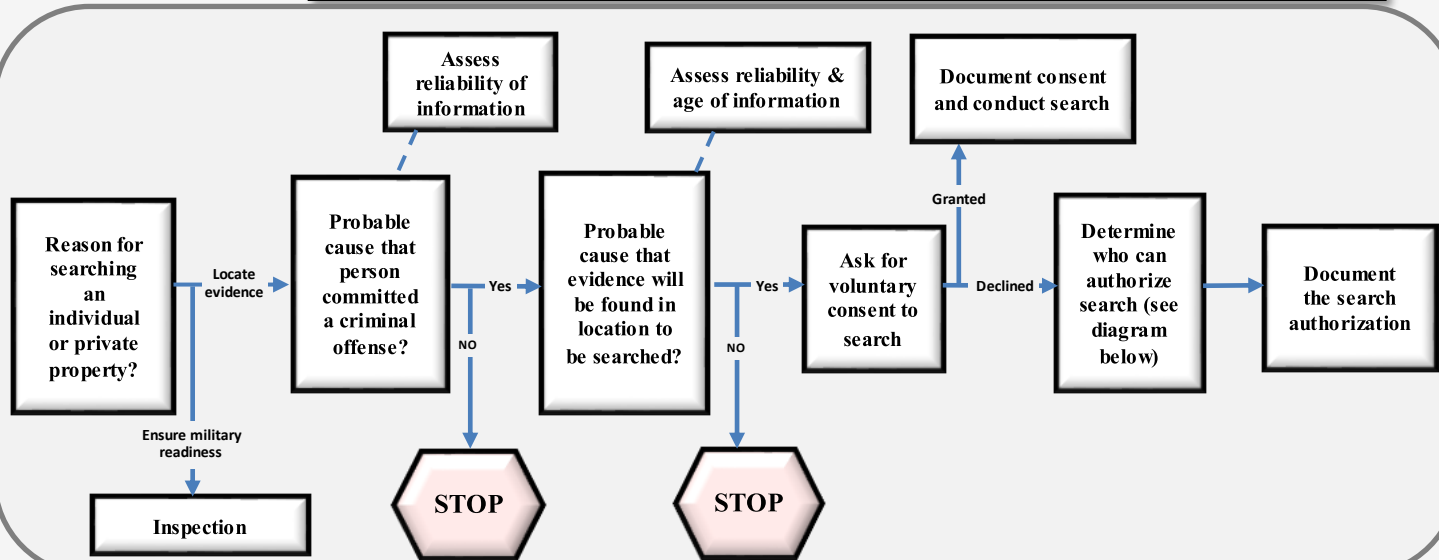
References

M.R.E. 311-317; OPNAVINST 5585.2C; MCO 5585.5

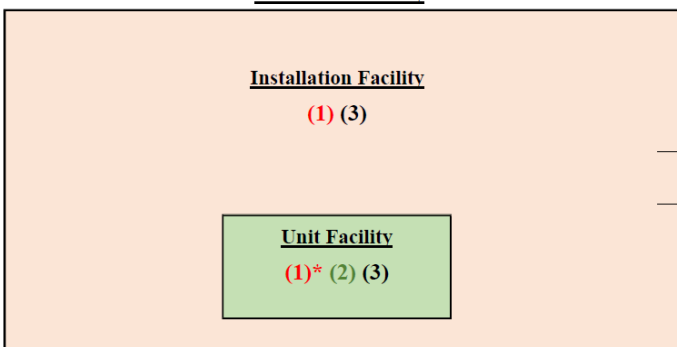
Introduction

A government search occurs when a government official, acting in an official capacity, conducts a search of a person or place in which an individual retains a reasonable expectation of privacy. A commander may authorize military authorities to conduct a search if probable cause exists (i.e., a reasonable belief, supported by sufficient facts and information, that a crime has been committed and that evidence of that crime will be found in the person or place to be searched).

Improperly authorized and/or conducted searches may prohibit use of any evidence discovered. This is a complex area of the law, and commanders are strongly encouraged to consult a staff judge advocate before authorizing a search. Similarly, for major offenses, commanders are strongly encouraged to coordinate any search with law enforcement (e.g., NCIS), absent urgent circumstances requiring immediate search to protect life/property or prevent the destruction of evidence. For searches of electronic records (Facebook, Google, etc.), consult a judge advocate.

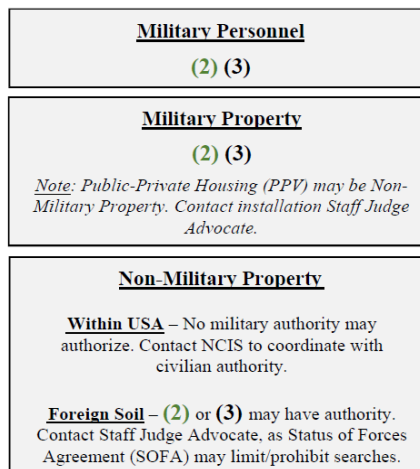


On-Base Authority



Key: (1) – Installation Commander
(2) – Unit Commander
(3) – Military Judge or Magistrate
* Depending on control over Unit Facility
Authority may not be delegated.

Off-Base Authority



Search Authorization

Definitions & Who May Authorize	
Search	Official government intrusion into a place (including human body) in which an individual possesses a reasonable expectation of privacy.
Search Authorization	Written or oral permission to search a person, location, or property for evidence of a crime & seize any evidence found.
Impartiality	Commanders must remain neutral & detached to authorize searches. They must avoid actions suggesting they are: <ul style="list-style-type: none"> • Biased against an accused • Predisposed to granting searches without an adequate basis
Probable Cause	A <u>reasonable belief</u> , supported by sufficient facts and/or information, that a crime has been committed & that evidence of that crime will be found in the person or place to be searched.

Requirements for a Valid Search	
Probable Cause or Voluntary Consent	You must have probable cause to authorize a search of a person or place, or the voluntary consent of the individual who has a reasonable expectation of privacy in the person or place to be searched.
Authority to Issue Search Authorization	Only a commander who has control over the person or place to be searched may authorize a search. Search authority is <u>not</u> delegable! The diagram on the opposite side provides a visual representation of this authority, but it varies depending on circumstances. Commanders unsure of the extent of their authority should contact a judge advocate. <u>Note</u> : Evidence of one offense (e.g. child sex abuse) does not necessarily equate to evidence of another offense (e.g., child pornography).
An Order	When practicable, formalize search authorizations in writing before conducting the search using forms available in the JAGMAN. If this is not practicable (e.g., concern the evidence may be destroyed before written authorization is obtained), search authorizations can be issued verbally but should be documented in writing as soon as possible thereafter. Finally, the written order must describe, in particular, the person or place to be searched and the evidence to be seized.

Searches vs. Inspections					
Inspection	Examination of the whole or part of a unit conducted as an incident of command the primary purpose of which is to determine & to ensure the security, military fitness, or good order & discipline of the unit.				
Difference Between Searches & Inspections	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%; text-align: center; border-bottom: 1px solid black;">Search</th> <th style="width: 50%; text-align: center; border-bottom: 1px solid black;">Inspection</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;"> <ul style="list-style-type: none"> • Purpose – obtain evidence of crime • Need probable cause </td> <td style="vertical-align: top;"> <ul style="list-style-type: none"> • Purpose – ensure command is properly equipped & functioning properly, etc. • Do not need probable cause </td> </tr> </tbody> </table>	Search	Inspection	<ul style="list-style-type: none"> • Purpose – obtain evidence of crime • Need probable cause 	<ul style="list-style-type: none"> • Purpose – ensure command is properly equipped & functioning properly, etc. • Do not need probable cause
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Court Review of Inspections	Do <u>NOT</u> order an inspection as a substitute for a search. Courts will review whether there was a valid military purpose for an inspection & will exclude evidence if they determine that the true purpose was to locate evidence of criminal activity.				

Searches of Human Bodies	
Visual Examination	Visually examining a person's unclothed body is permissible if: <ol style="list-style-type: none"> 1. The person voluntarily consents; <u>or</u> 2. The exam is reasonably administered & conducted pursuant to: <ul style="list-style-type: none"> • A valid inspection, or a search pursuant to probable cause; • A search upon entry/exit of installation if reasonably suspect weapons/contraband are on the person; <u>Note</u> : Person conducting exam should be of same sex as the subject of the exam.
Intrusion into the Body	Intruding into a person's body is permissible only if: <ol style="list-style-type: none"> 1. <u>Mouth, Nose, Ears</u>: Same conditions as visual examination (see above). 2. <u>Other Body Cavities</u>: person must consent or there must be a probable cause or a search authorization. Intrusion <u>must</u> be conducted by a medically qualified professional.
Extracting Body Fluids	Extracting fluids for evidentiary purposes is permissible if: <ol style="list-style-type: none"> 1. The person consents; 2. Pursuant to a search authorization; or 3. Pursuant to probable cause & without a search authorization, if delay necessary to obtain an authorization would result in destruction of evidence. <u>Note</u> : Extraction <u>must</u> be made by medically qualified professional.

Best Practices	
Voluntary Consent	When practical, ask the owner of the property if they will consent to a search of the property before issuing a search authorization, & document consent in writing. Best practice is to have a written search authorization signed so that the search can be immediately executed if the person does not consent. See JAGMAN A-1-p for fill-in-the-blank consent to search form.
Electronic Devices	The law related to technology is rapidly changing & is very fact-specific. Consult a judge advocate before issuing a search authorization of any electronic devices.
Inspections	Issue & follow a standardized inspection instruction. Conduct inspections at predetermined, scheduled intervals.
Military Working Dogs	Special rules apply to use of Military Working Dogs (MWDs). Consult OPNAVINST 5585.2C and/or MCO 5585.5, as applicable.